

**General Mills Restaurants, Inc., d/b/a Red Lobster  
and United Steelworkers of America, AFL-  
CIO-CLC. Cases 7-RC-18925 and 7-RC-18926**

December 14, 1990

**DECISION ON REVIEW AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND DEVANEY

On May 16, 1989, the Regional Director for Region 7 issued his Decision and Direction of Elections finding appropriate two single-location units of the Employer's restaurant employees located in Taylor and Dearborn Heights, Michigan. On May 30, 1989, the Employer filed with the Board a timely request for review, and Motion to Stay the Regional Director's Decision and Direction of Election. At the same time, the Employer filed a Motion to Stay Election, Motion to Reopen Record and Motion to Transfer Case to another Regional Office. On June 13, 1989, in a supplemental decision, the Regional Director affirmed his Decision and Direction of Elections. On June 16, 1989, the Board granted the Employer's request for review solely with respect to unit scope and the Employer's allegation that the transcribed record, as a result of the reporting service company's actions, was incomplete. The Board ordered that the elections be held but that the ballots be impounded and the cases remanded to the Regional Director to reopen the record for receipt of the omitted testimony. In all other respects, the request for review was denied, as were the Employer's motions. Pursuant to the Board's Order, the elections were conducted, the ballots were impounded, the record was reopened, and a July 11, 1989 hearing was held. On September 5, 1989, the Regional Director issued his Second Supplemental Decision and Order, upholding his original decision and ordering that the ballots be opened and counted. The Employer filed a timely request for review and supplemental brief in support. On December 28, 1989, the Board granted the Employer's request for review.

The National Labor Relations Board has delegated its authority in this matter to a three-member panel.

The Board has reviewed the record in light of the requests for review and supporting briefs and has decided to affirm the Regional Director's findings and conclusions as modified. In agreement with the Regional Director, we conclude that the evidence presented by the Employer fails to overcome the presumption that the requested single-location units are appropriate. In support of this conclusion, we find that the general managers of the two restaurants in question retain a meaningful amount of autonomy and that the evidence concerning employee interchange is not sufficient to require broader units than those requested.

**Facts**

The Employer, which does business under the name Red Lobster, operates 13 restaurants in the Detroit, Michigan area. The Union has sought to represent employees in separate units at two area locations: Taylor and Dearborn Heights. As noted, the Regional Director found appropriate the two single-location units requested by the Union, rejecting the Employer's primary contention that the smallest appropriate unit must encompass all 13 restaurants in the Detroit area.<sup>1</sup>

Pursuant to the Employer's current organizational structure, each of the Employer's Detroit restaurants has a general manager, who is assisted by a dining room manager and either an assistant or an associate manager.<sup>2</sup> The general manager reports to one of three area supervisors, each of whom has primary responsibility for four or five of the Detroit restaurants. In turn, the area supervisors report to a director of operations, whose responsibility covers 24 Red Lobster restaurants in Michigan, as well as 4 in Indiana.<sup>3</sup>

The Taylor restaurant employs approximately 100 employees and the Dearborn Heights restaurant employs approximately 85. There are a total of about 1200 employees in the 13 Detroit restaurants. The average distance between restaurants is about 7 miles, and all are located within a radius of approximately 22 miles.

There is no history of collective bargaining with respect to the employees in any of the various units asserted as being appropriate.

The Employer's personnel policies and procedures are centralized. Policies regarding wages, hours, overtime, vacations, holidays, retirement, profit sharing and employee fringe benefits are centrally established and uniformly applied at all the Red Lobster restaurants.

Within the individual restaurants, general managers are present a maximum of 5 days each week. Area supervisors are present in each of the restaurants on average about once each week, typically for the full day.<sup>4</sup> When not present, the area supervisor maintains daily telephonic communication with each of the restaurants to which he is assigned. As explained below, both the

<sup>1</sup> The Regional Director also found no merit to the Employer's alternative claims that the smallest appropriate unit should consist either of employees at the four restaurants under the control of Area Supervisor David Shanks (also including Ann Arbor and Novi, Michigan locations), or a combined unit of the Taylor and Dearborn Heights employees.

<sup>2</sup> The record does not clearly set out the functional distinction between an assistant and an associate manager.

<sup>3</sup> These 28 restaurants are segmented in three geographic territories, one of which is named the Detroit ADI (area of dominant influence), encompassing the 13 restaurants in question.

<sup>4</sup> Even assuming that area supervisors are scheduled to be in restaurants on the general managers' days off, there is insufficient staffing for persons in these two positions to be present in all restaurants at all times. The record further indicates that the area supervisor and the general manager may be present simultaneously in a given restaurant. Thus it appears that on some days the most responsible person in the restaurant is either the assistant or the associate manager.

general manager and the area supervisor are responsible for the operation of the individual restaurant.

With respect to employee relations, the evidence shows that most of the hiring at the Taylor and Dearborn Heights restaurants is done by the general manager, without the area supervisor's involvement.<sup>5</sup> It appears that the area supervisor controls only the size of the employee complement at each restaurant and determines whether an applicant may be hired at an hourly rate above \$5.<sup>6</sup>

General managers also evaluate employees, using a form prepared by the Employer. Although these evaluations may be completed without the prior knowledge of or approval by the area supervisor,<sup>7</sup> there are certain restrictions placed on the general manager in completing these evaluations. First, there is uniform testimony that unsatisfactory evaluations need the prior approval of the area supervisor.<sup>8</sup> Second, the area supervisor also becomes involved if an employee complains about the evaluation he received.

The evidence further indicates that the general managers initiate wage increases for employees, but that the area supervisor's approval is required for all wage increases. The record provides only general evidence that it is more difficult to secure an area manager's approval for increases of more than 50 cents per hour; however, the frequency with which wage increases under 50 cents an hour are denied is unclear. Area supervisors also must approve any wage rates over \$7.50 per hour.

Although the area supervisor determines the number of employees who are to work in each restaurant,<sup>9</sup> the general manager is responsible for the details of employee scheduling.<sup>10</sup> He has authority to call in and release employees as needed, and approves overtime pursuant to set guidelines. Further, he approves vacation requests and grants leaves of absence of up to 7 days. He initials timecards and distributes paychecks.

In regard to employee discipline, the general managers can administer verbal discipline, which is memorialized in the employee's personnel record without

prior approval. General managers can also issue written discipline and have authority to discipline employees for attendance problems without prior approval. Other forms of written discipline, including general manager's recommendations that an employee be discharged, require the prior approval of the area manager, who conducts an independent investigation. Discharge recommendations are followed approximately 50 percent of the time.

There are meetings of employees in the restaurants which are scheduled by the general manager, sometimes at the direction of the area supervisor. The evidence indicates that employees' concerns, characterized as grievances, are expressed and responded to at these meetings. If the area supervisor is present, he or the general manager may respond to these concerns. The evidence is clear that the general manager may resolve grievances that do not implicate general corporate policy, whether presented at these meetings or at other times. Specifically, the evidence indicates that the general managers have authority to correct payroll problems.

The evidence indicates that there was a certain degree of employee interchange involving the 85 Dearborn Heights employees and the 100 Taylor employees. During 1988, 11 employees were permanently transferred into or out of these two restaurants. The testimony indicates that permanent transfers were generally at the employee's request. During this period, there were also 11 instances in which Dearborn Heights employees were temporarily assigned work in another restaurant, and 16 times when employees from other restaurants were assigned work at the Dearborn Heights location.<sup>11</sup> During 1988, only two Taylor employees were temporarily assigned work at other locations. All of these temporary assignments were voluntary, and about half of them were of very limited duration.<sup>12</sup>

### The Regional Director

As observed above, the hearing in this case was reopened in order to record the full testimony of one witness, Area Supervisor Norris, whose testimony was not fully recorded at the initial hearing. The Regional Director found that Norris' testimony at the second hearing contradicted what Norris stated at the first hearing<sup>13</sup> concerning the general manager's authority to handle grievances, grant pay raises, and administer discipline. The Regional Director also found that the

<sup>5</sup>Of the 40 employees hired in the 6 months before the hearing, the area supervisor had no involvement in the hiring of at least 28 of these employees. Evidence of the area supervisor's involvement in interviewing and hiring a portion of the applicants is consistent with, and may be explained by, his presence in the restaurants during days the general manager was not there.

<sup>6</sup>The determination whether to rehire a former Red Lobster employee is not controlled by the general manager, but is subject to prior approval by the area supervisor.

<sup>7</sup>The area supervisor reads and signs evaluations, sometimes after they are given to the employee.

<sup>8</sup>Area Supervisor Norris testified that the area supervisor also must approve in advance all evaluations that are also above satisfactory. Norris' testimony was not, however, corroborated by Area Supervisor Shanks who has responsibility for the two restaurants covered by the petitions.

<sup>9</sup>The area supervisor's involvement in setting employment levels and in wage determinations is directly connected to his responsibility for maintaining a budget for restaurants under his authority.

<sup>10</sup>If there is a question whether an employee being trained is ready to be scheduled for a certain position, the details will be discussed with the area supervisor.

<sup>11</sup>Several employees were temporarily assigned to another restaurant on more than one occasion, so that, in total, 19 employees were involved in the Dearborn Heights temporary transfers.

<sup>12</sup>In half of the instances, earnings from the temporary assignment were less than \$21, indicating that the employee worked only a few hours at the other location.

<sup>13</sup>The Regional Director noted that no claim was made that the testimony from the first hearing was defective insofar as it was recorded.

testimony of two other area supervisors differed from that of Norris. In making his unit determinations, the Regional Director declined to rely on Norris' testimony to the extent that it was internally conflicting.

In reaffirming his initial finding that the petitioned-for units were appropriate, the Regional Director relied on the testimony of Area Supervisors Grierson and Shanks and on Norris' testimony on matters about which Norris did not contradict himself. The Regional Director found that this evidence established that the general managers possessed significant autonomy in the day-to-day operations of their individual restaurants. In reaching this conclusion, he found that general managers possessed the authority to hire new employees, gave verbal warnings which were documented in employees' personnel files, prepared evaluations, effectively recommended discharge, and granted employees wage increases. He further found that the general managers called in and released employees, re-assigned them within the restaurant, granted time off and leaves of absence, and scheduled vacations, conducted employee meetings, and resolved grievances, including payroll problems. In addition he found that they were in charge of the day-to-day operations of the restaurant.

The Regional Director also found that the degree of employee interchange did not compel a multilocation unit. He found that the number of permanent transfers was relatively small compared to the size of the work force in the petitioned-for restaurants, and that the extent of temporary transfers was also not so substantial as to negate the appropriateness of the separate units.

#### The Employer's Request for Review

Employer requested review on two general grounds: that the Regional Director misconstrued the factual evidence, resulting in erroneous conclusions, and that the Regional Director made errors of law. The Employer also alleges bias and prejudice.<sup>14</sup>

The Employer argues that the restaurants are not autonomous and that the Regional Director ignored certain limitations on the authority of the general managers. The Employer asserts that general managers do not effectively recommend discharge, and that the amount of hiring they do is set by area supervisors. Area supervisors approve about 35 percent of those actually employed, according to the Employer, relying on Norris' testimony. All evaluations done by general managers must eventually be approved by the area supervisor. General managers cannot give an evaluation of "above satisfactory" or "needs improvement" without prior approval from the area supervisor. Vaca-

tions granted and grievances resolved by the general managers are routine and do not require the exercise of independent judgment. General managers have no authority to change wages. Because of these limits on the autonomy of the individual stores, the Employer argues that individual units are inappropriate.

The Employer claims that the Regional Director erred in not considering all of Norris' testimony at the second hearing. The Employer asserts that Norris' testimony is not contradictory and that the Regional Director did not pay adequate attention to those aspects of the testimony in the second hearing that were not found to be contradictory.

The Employer argues that the Regional Director's legal analysis is defective. The Employer acknowledges the single-unit presumption, but, citing *Gray Drug Stores*, 197 NLRB 924 (1972), contends that this is a "weakened" presumption whenever the single facility is part of a retail chain. The Employer also argues that, in determining whether the evidence shows a merger of the single-store work force into the more comprehensive grouping so as to rebut the presumption, the Board need not find that the separate identity of the single store has been "completely submerged." The Employer implies that the Regional Director applied too strict a test in deciding whether it had rebutted the presumption in this respect.

#### Discussion

The Board in *Kapok Tree Inn*, 232 NLRB 702, 703 (1977), succinctly stated its approach in determining appropriate units in multifacility operations such as the one we have before us:

When dealing with a multifacility operation, the well-established Board policy is to find a single-facility unit presumptively appropriate. This presumption can be overcome, however, by a showing of functional integration so substantial as to negate the separate identity of the single-facility unit. In making determinations on this issue, the Board looks to such factors as prior bargaining history, the geographical proximity to other facilities of the same employer, the degree of day-to-day managerial responsibility exercised by the branch facility management, the frequency of employee interchange, and whether the requested single-facility unit constitutes a homogeneous, identifiable, and distinct employee grouping. *Haag Drug Company, Incorporated*, 169 NLRB 877 (1968).

As explained below, we conclude that the evidence presented by the Employer is insufficient to overcome

<sup>14</sup> We have carefully examined the record and find no basis for finding bias or prejudice on the part of the Regional Director. Even assuming *arguendo* that we did so find, this would not affect the outcome of this case because we have made an independent review of the record.

the presumptive appropriateness of a single-facility unit.<sup>15</sup>

The separate Red Lobster restaurants in the Detroit area are not physically proximate to each other, nor are they functionally integrated. None of the restaurants in question has any collective-bargaining history, and the identity of the employees as a separate grouping at each restaurant is apparent, particularly in that hiring is done locally at each restaurant. Further, we find that the degree of employee interchange is minimal, and the significance of that interchange is diminished because the interchange occurs largely as a matter of employee convenience, i.e., it is voluntary. Temporary transfers in this case consist of employees working some hours during the week in a store other than the one to which they are assigned. Even in the Dearborn Heights restaurant, where the degree of temporary interchange is most extensive, only 19 employees out of a work force of 85 employees were affected by a temporary work assignment during 1988, usually for very short periods of time.<sup>16</sup> Permanent transfers, a less significant indication of actual interchange than temporary transfers, were similarly minimal, with 11 permanent transfers in a combined work force of 185 employees within a 1-year period. Thus, the evidence is insufficient to support the Employer's claim that the separate units at the two petitioned-for restaurants is inappropriate.

The sole remaining factor having an impact on the scope of the appropriate unit is the degree of local autonomy of the general managers at the Dearborn Heights and Taylor facilities. As explained below, we agree with the Regional Director's conclusion that general managers retain sufficient authority to support the presumption in favor of single-facility units.

Although it is clear that the general managers have limitations on their authority, some imposed by corporate policy and some based on their relationship to the area supervisor, we find that the general managers are responsible for the day-to-day management of the restaurants. In the petitioned-for restaurants, the gen-

eral managers are the persons who make the overwhelming majority of the hiring decisions, accepting applications for employment and conducting interviews of the applicants. Further, they are responsible for evaluating employees, with approval necessary only for those rated less than satisfactory. Their initiation of wage raises, another clear area of their authority, has not been shown to require anything more than routine approval by the area supervisors, at least for raises of less than 50 cents an hour. General managers also address grievances and resolve them within the Employer's existing policies. Their role in the discipline of employees includes issuing written warnings to employees for attendance matters and oral warnings for all matters. Such warnings are then recorded in the employee's personnel file retained at the restaurant. Although we agree with the Employer that the evidence does not support the Regional Director's finding that general managers make effective recommendations on discharge (given that an independent investigation is conducted by the area supervisor with general manager's recommendation being accepted only half of the time), it remains that the general manager plays an active role in disciplining employees. Finally, the general manager is responsible for the day-to-day staffing of the restaurant, calling in and releasing employees, granting overtime, reassigning employees, and granting vacations and leaves of absence. Although the evidence shows that the area supervisor is involved in restaurant operations, the record does not clearly distinguish between the function of the area supervisor as a substitute for the general manager (i.e., when only the area supervisor is present in the restaurant), and his function as the superior of the general manager (i.e., when both are present or when the general manager may not act alone). To the extent that the record is ambiguous in this regard, we find that it detracts from the Employer's effort to overcome the single-facility presumption.

We emphasize that the foregoing recitation of the facts is based primarily on the testimony of Area Supervisor David Shanks, who, as the area supervisor responsible for the Dearborn Heights and Taylor restaurants,<sup>17</sup> had firsthand knowledge of the petitioned-for units. While the testimony of other witnesses is not wholly irrelevant, the testimony of the other area supervisors does little to advance the Employer's conten-

<sup>15</sup> The Employer misconstrues *Gray Drug Stores*, supra, in contending that the single-unit presumption is weaker in cases involving retail chains than it is where other types of facilities are concerned. The Board in *Gray Drug* cited the same factors for rebutting the presumption that it uses in any multifacility case. 197 NLRB at 925. The Board's special rule for retail chains—that the bargaining unit “should embrace all stores within the employer's geographic or administrative area”—was applied only *after* it determined that the single-unit presumption had been rebutted. *Ibid.* The Board then confronted the issue whether the unit should consist of all stores in the State of Florida, all stores in two contiguous counties which were under the supervision of managers who supervised no other stores in the State, or all stores in one of those two counties. The Board selected the two-county unit, applying the retail chain policy that comes into play after the single-unit presumption has been rebutted. *Id.* at 926.

<sup>16</sup> Because the evidence does not take into account employee turnover, the record does not accurately show how many different individuals were employed at the Dearborn Heights facility during 1988. It appears, however, that the proportion of all such employees affected by temporary assignments when turnover is considered was substantially less than 20 percent of those employed during this period.

<sup>17</sup> The record contains reference to a change shortly before the first hearing that one of the restaurants usually under Shanks' authority, Dearborn Heights, was being overseen by a person who, until recently, had been the director of operations in Kentucky and Tennessee. In addition, at some point in time between the two hearings, the Dearborn Heights restaurant was assigned to Area Supervisor Joseph Grierson. The record does not indicate that those changes had any impact on the authority of the general managers in these restaurants.

tion that uniform management practices were followed throughout the restaurants in the Detroit ADI.<sup>18</sup>

We find no merit in the Employer's contention that the Regional Director misapplied legal precedent. Despite the transfers and the centralized administration of the Employer's restaurants, we find that the single-facility units at Dearborn and Taylor are appropriate. As in *Big Y Foods v. NLRB*, 651 F.2d 40 (1st Cir. 1981), affg. 251 NLRB 869 (1980), it appears that only a small number of employees were involved in transfers. This distinguishes the case at hand from *White Castle System*, 264 NLRB 267 (1982), in which the Board dismissed the election petition. In that case 200 employees were involved in temporary transfers out of a total group of 350–400 employees.

Furthermore, as outlined above, employees at the restaurants in question "perform their day-to-day work under the immediate supervision of one who is involved in rating their performance and affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems." *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980). Finally, there is no bargaining history of, nor any request for, representation on a broader basis. See *Renzetti's Market*, 238 NLRB 174, 176 (1978).

The Employer states that area supervisors have a high degree of involvement and contact with the restaurants and that therefore the general store managers do not have independent authority. In support, the Employer cites *Pic-Way Shoe Mart*, 274 NLRB 902 (1985); *Petrie Stores Corp.*, 266 NLRB 75 (1983); and *Super X Drugs of Illinois*, 233 NLRB 1114 (1977). These cases are distinguishable, however, in that, unlike here, the record in each showed that the local manager did not make the final decision on hiring employees. The Employer also relies on *Point Pleasant Foodland*, 269 NLRB 353 (1984), and *Kirlin's Inc.*, 227 NLRB 1220 (1977). In *Point Pleasant*, the Employer's president had final authority in all personnel matters, including hiring. In *Kirlin's*, the store managers could not do more than recommend job applicants.

In a related contention, the Employer cites *V.I.M. Jeans*, 271 NLRB 1408, 1409 (1984), *White Castle*,

*supra*, and *Lawson Milk Co.*, 213 NLRB 360 (1974), for the proposition that the Regional Director did not take proper account of evidence showing that the general managers' hiring authority was severely circumscribed by dictates from above, e.g., by constraints on the number of employees whom they could hire. We find the argument unpersuasive and the cases distinguishable. It is unlikely that a manager of a single facility in any multifacility operation would be free of all restraints on staffing levels. The significant point here is that the managers of the restaurants at issue possess hiring authority and that they make the majority of decisions concerning whom to hire. In *V.I.M. Jeans*, by contrast, the local manager conferred daily with the central management official, who reviewed all hiring and firing decisions. *Id.* at 1409. Similarly, in *White Castle*, *supra*, 264 NLRB at 268, all of the local manager's hiring decisions were subject to the approval of district supervisors, who visited the premises daily. Finally, the Board analyzed the circumscriptions on a manager's authority in *Lawson Milk Co.* in the context of determining whether a four-store unit that was "neither an administrative subdivision nor a distinct geographical grouping of stores" was an appropriate unit. *Id.* at 360–361. This analysis followed from the Board's determination, pursuant to the traditional test, that the single-facility presumption had been rebutted. See footnote 15, *supra*.

In sum, we find, contrary to the Employer's contentions, that the Regional Director's unit finding is consistent with Board precedent concerning the appropriateness of single-facility units, including such units in retail store chains.

We therefore find the following units appropriate for collective bargaining:

All full-time and regular part-time employees employed by the Employer at its Store No. 123 at 8787 Telegraph Road, Taylor, Michigan, including hostess/host, bus persons, servers, utility employees, bartenders, cashiers, production employees and line employees; but excluding all managers, guards and supervisors as defined in the Act. All full-time and regular part-time employees employed at its Store No. 124 facility at 6850 N. Telegraph Road, Dearborn Heights, Michigan, including hostess/host, bus persons, servers, utility employees, bartenders, cashiers production employees and line employees; but excluding all managers, guards and supervisors as defined in the Act.

Accordingly we shall remand the case to the Regional Director with directions to open and count the impounded ballots, to issue tallies of ballots, and to take further appropriate action.

<sup>18</sup>For example, Area Supervisor Joseph Grierson testified that he handles all "need improvement" evaluations. He also testified that he sometimes initiates pay raises. This might indicate that the practice in Grierson's area varies from that of Michael Norris' area. Norris testified that he approves all pay raises. Norris also testified that he approves all evaluations that are either above or below satisfactory; but Area Supervisor Shanks only required prior approval of below-satisfactory evaluations. Norris himself admitted that the entry level wage rate is set by each individual area supervisor, and that his rate might vary from that set by David Shanks or Joseph Grierson.

Because we find that, by virtue of his position, David Shanks provided the most probative testimony on the issue of the autonomy of the two petitioned-for restaurants we need not pass on the Employer's attack on the Regional Director's treatment of internal conflicts he perceived in Norris' testimony in the two hearings. Thus, it is also irrelevant whether that treatment could be characterized as a credibility finding.

## ORDER

It is ordered that this case be remanded to the Regional Director for Region 7 to open and count the

ballots cast in the elections conducted in this proceeding on June 16, 1989, to issue tallies of the ballots thereon, and to take further appropriate action.